



NATIONAL ASSOCIATION OF THE DEAF

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July 15, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street SW
Washington, DC 20554

Re: GN Docket 00-185, CS Docket No. 02-52. Reply Comments
Declaratory Ruling and NPRM – Cable Facilities

Dear Secretary Dortch:

The National Association of the Deaf (NAD) appreciates this opportunity to submit comments on the Commission's Declaratory Ruling and Notice of Proposed Rulemaking (NPRM) on cable modem Internet services, released March 15, 2002.

Established in 1880, the NAD is the nation's oldest and largest consumer-based national advocacy organization safeguarding the civil and accessibility rights of 28 million deaf and hard of hearing individuals in the United States. The NAD is particularly interested in broadband services. For example, we recently supported publication of "Broadband and Americans with Disabilities" by New Millennium Research, which is available on the Internet: (<http://www.newmillenniumresearch.org/disability.pdf>).

Dockets GN 00-185 and CS 02-52 address high-speed Internet access provided over cable facilities and regulatory treatment for broadband access to the Internet over cable facilities. The FCC also issued, in connection with these dockets, a Declaratory Ruling in which it expressed its intention to regard such broadband services as "information services" and therefore generally free from FCC regulation.

The NAD believes that the FCC's actions unnecessarily jeopardize equal access for Americans with disabilities to high-speed Internet services provided over cable facilities. We are disturbed, too, that the FCC did not even mention in its March 15, 2002 Declaratory Ruling and NPRM the needs of people with disabilities. The Commission did bring up such needs in its earlier NRPM on wireline broadband services (see Paragraph 59 of CC Dockets 02-33; 95-20, 98-10, released February 10, 2002), which asks about possible application of Section 255 of the Communications Act of 1934, as amended. The FCC's failure even to mention disability issues in the GN Docket 00-185 and CS Docket 02-52 proceedings is disturbing. The NAD believes this is a serious oversight.

We believe that the Commission has ancillary jurisdiction under title I of the Act to act in the public interest. People with disabilities will **not** have equal access to high-speed Internet services provided via cable modem **unless** positive steps are taken to ensure accessibility. On this point, Section 255 of the Communications Act as amended by the Telecommunications Act of 1996 specifically did **not** distinguish between communications that are provided via voice, text, data and/or video. Rather, the Congress required that products and services be made to be accessible to and useable by Americans with disabilities if readily achievable and, in the event that accessibility were found not to be readily achievable, that accessibility be assured by means of compatibility with adaptive equipment and software.

The NAD has among its thousands of members Americans who subscribe to different Internet Service Provider (ISP) services. Some use America Online, some use Microsoft Network, some use Earthlink, and some use others ISPs. The fact that some cable providers offer one of these competing ISP services, and that some offer a choice of two or three in some localities (e.g., paragraphs 21-24) does not meet the needs of our members. NAD members who subscribe to, for example, MSN may not know who among their friends, co-workers and other acquaintances who are AOL IM users is online. Many NAD members use IM services as equivalents to voice telephony, voice mail, and similar voice-based services. Indeed, in key respects, IM has become, for many NAD members, an indispensable tool for intra- and inter-office communications at work. We also recognize that not all ISP services are accessible to people who are blind or have low vision, and to persons with learning disabilities, who rely upon screen readers and/or speech synthesis. Telecommunications companies, but not cable companies, must offer ISP choice under the FCC's proposed rulemaking for wireline and cable-modem. For all these reasons, the NAD believes that it is important that the choice of ISP remain that of the end-user.

We found the FCC's determination that high-speed Internet service offered via cable modem is an "interstate information service" (paragraph 59) to be extraordinary, particularly in light of the Commission's own finding that "by definition an information service includes a telecommunications component" (paragraph 58). This determination explicitly exempts high-speed Internet service over cable facilities from any possible reach by Section 255, which of course covers telecommunications products and telecommunications services.

We were disturbed that the FCC has not yet decided affirmatively to use its Title I ancillary jurisdiction authority in the area of cable-modem regulation. Certainly, we would have expected the Commission to at least invite comment on the issue of accessibility for Americans with disabilities – and title I offers the Commission an excellent basis for doing so. The Commission's apparent intention to regard broadband as "technology neutral" and to encourage deployment across different platforms by regulating telephone-based and cable-based facilities equivalently seems to require that accessibility be provided on both platforms. We stated in our wireline NPRM comments the following, which we believe applies here, as well:

"The NAD strongly urges the Commission to invoke its authority under Title I of the Act to regulate enhanced services (see Computer II and Computer III decisions). There, the FCC determined that it could impose requirements on what then were called "enhanced services". The 1996 Telecommunications Act essentially codified the FCC's decisions, using the term

“information services” in so doing. Although “information services” are defined in that Act in a way that is somewhat broader than “enhanced services,” the ability of the FCC to regulate remains. The NAD urges the FCC to invoke that authority. We also believe that the Commission’s general public-interest authority supports such steps.”

The NAD believes that the FCC’s actions in these proceedings are without foundation in law, are peremptory, and for these reasons recklessly place at risk a group of Americans that the Congress explicitly sought to protect in the 1996 Act. The overall effect of the FCC’s actions in the instant case is to remove high-speed Internet services offered over cable facilities from any reach whatsoever of Section 255 – without offering **any** comparable accessibility assurances to fill the gaping hole that such action created.

We ask the FCC to extend the rules it adopted for Section 255 (see “In the Matter of Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities,” Report and Order and Further Notice of Inquiry, WT Docket 96-198, FCC 99-181 (re: Sept. 29, 1999) to broadband. Specifically, the NAD reminds the Commission that accessibility is required with respect to **end-user equipment** and to **services** and, in both instances, where accessibility not available via readily achievable measures then compatibility with adaptive devices and services must serve as a back-up assurance.

Absent such proactive steps by the FCC, implementation of the Declaratory Ruling and NPRM as announced on March 15 could have serious and very deleterious effects upon Americans with disabilities by depriving them of equal access to high-speed Internet services over cable facilities.

Thank you for your attention to this critically important matter.

Sincerely,

A handwritten signature in black ink, reading "Nancy J. Bloch". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Nancy J. Bloch
Executive Director